

Approved April 25, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

3:20 ~~xxx~~ p.m. on February 26, 1990 in room 522-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mike Heim, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

James Clark, Kansas Association of County and District Attorneys
Randy Hearrel, Kansas Judicial Council
Judge Ed Larson, Judicial Council Probate Advisory Committee
Jim Weisgerber, Kansas Department of Revenue
Chip Wheelen, Kansas Medical Society

The Chairman opened the meeting by stating that this session of the committee would be to discuss and act on bills previously heard.

SB 611 - concerning civil actions; creating a cause of action by educational institutions against persons who cause institution to be in violation of national collegiate athletic association rules.

SB 611 was suggested as a possible topic for an interim study with the possibility of comparing to the Nebraska legislation on the same topic. No action was taken.

SB 674 - concerning crime victims compensation; relating to claims; eligibility.

It was the consensus of the committee that the fiscal note of this bill would be negligible as it would be fee-generated. It was also pointed out that passage of this bill would allow Kansas to maintain receipt of federal funds.

Senator Parrish moved to recommend SB 674 favorable for passage. Senator Martin seconded the motion. The motion carried.

SB 680 - concerning protection from abuse; mandating the enforcement of protection from abuse orders by law enforcement officers.

Senator Bond moved to recommend SB 680 favorable for passage. Senator Rock seconded the motion.

Senator Yost made a substitute motion to amend SB 680 on page 1 line 17 to replace K.S.A. 20-1209a with K.S.A. 20-1204a. Senator Feleciano seconded the motion. The motion carried.

Senator Petty moved to recommend SB 680 favorable for passage as amended. Senator Yost seconded the motion. The motion carried.

SB 681 - concerning crimes and penalties; relating to records of incidents and reporting thereof.

Senator Martin moved to recommend SB 681 for an interim study because of the possible fiscal impact. Senator Kerr seconded the motion. The motion carried.

Senator Morris moved to recommend SB 681 "be not passed". Senator Rock seconded the motion. The motion carried.

SB 682 - concerning the protection from abuse act; relating to orders for relief; compensation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 522-S, Statehouse, at 3:20 ~~xxx~~ p.m. on February 26, 1990.

James Clark, Kansas Association of County and District Attorneys, raised concerns about SB 682. He stated that if the committee was concerned about law officers not knowing about the protection from abuse stated in this bill, they would be more inclined to know about what is in the criminal trespass statutes than what is in the protection from abuse act. He added that the only thing this bill does is state the same thing in two different places in the statutes.

The Chairman reminded the committee that the second issue gives the courts the ability to award monetary damages to the victims. It was noted that the monetary damage option currently exists by filing a civil suit.

Senator Rock moved to recommend SB 682 favorable for passage. Senator Martin seconded the motion. The motion failed. No further action was taken.

- SB 321 - concerning civil procedure for limited actions; relating to service of process.
- SB 620 - concerning civil procedure; relating to service of summons and petition; providing for fee thereof.

Senator Rock was recognized to report from the Probate and Civil Procedure Subcommittee. He suggested that the committee delay acting on the service of process bills until the House addresses a similar bill in the House Judiciary Committee.

Randy Hearrel, Kansas Judicial Council, stated that the bill currently in the House Committee, HB 3021, is a more comprehensive package sponsored by the Judicial Council.

No action was taken at this time. It was the consensus of the Committee to wait for the bill sponsored by the Judicial Council to address the issue of service of process.

- SB 261 - concerning the Kansas probate code; relating to disposition of property by will or other lawful disposition effective at death.

Judge Ed Larson, Judicial Council Probate Advisory Committee, presented background testimony in support of SB 261, amending 59-602 and 59-603. Judge Larson referred to the case of Newel v George and suggested amendments to the bill to preserve the spouse's half of the election. (ATTACHMENT I)

Senator Rock moved to amend SB 261 as suggested by Judge Larson. Senator Parrish seconded the motion. The motion carried.

Senator Rock moved to recommend the bill favorable for passage as amended. Senator Moran seconded the motion. The motion carried.

- SB 338 - relating to inheritance tax; concerning the determination of gross estate; relating to inheritance tax liens.

Jim Weisgerber, Kansas Department of Revenue, presented background testimony in support of SB 338. Mr. Weisgerber requested that New Section 1 be stricken as a new bill is expected to be introduced addressing that section of the statutes. Section 2 is language to clarify the situations when transfers are "in accordance with law". If a transfer is made in accordance with the provisions of the uniform act for the simplification of fiduciary transfers, then it is made in accordance with law for purposes of inheritance tax.

Senator Rock moved to strike "New Section 1" from SB 338. Senator Moran seconded the motion. The motion carried.

Senator Moran moved to recommend SB 338 favorable for passage as amended. Senator Rock seconded the motion. The motion carried.

- SB 190 - concerning surrogate mothers; rendering void and unenforceable agreements for services of a surrogate mother for consideration; rendering voidable agreements for services of surrogate mother without consideration; providing for penalty for promoting such agreements.
- SB 671 - concerning surrogate mothers; rendering voidable agreements for services of a surrogate mother; providing for penalty for promoting such agreements for certain persons.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 522-S, Statehouse, at 3:20 ~~a.m.~~/p.m. on February 26, 1990.

Chip Wheelen, Kansas Medical Society, presented a suggestion to the committee to amend either SB 190 or SB 671, in the event either should be considered for passage, to change the current "health care providers" to "physician". (ATTACHMENT II)

Senator Gaines moved to report SB 190 favorable for passage. The motion died for lack of a second.

Senator Morris moved to amend SB 671 by striking on line 28 "health care providers" and insert "physician" as suggested by Mr. Wheelen. Senator Bond seconded the motion. The motion carried.

After further discussion by the committee, Senator Morris moved to strike subsection (c) of SB 671. Senator Rock seconded the motion. The motion carried.

Senator Morris moved to recommend SB 671 favorable for passage as amended. Senator Parrish seconded the motion. The motion carried.

SB 524 - concerning civil procedure; relating to wrongful death actions; amount of damages.

SB 525 - concerning certain rates of interest; relating to interest on judgments.

Senator Bond repeated his subcommittee report. (Previously stated in the February 26, 10:00 a.m. minutes.)

Senator Bond moved to recommend SB 525 "be not passed". Senator Kerr seconded the motion. The motion failed.

Senator Yost moved to conceptually amend SB 525 on lines 39-40 for computing interest from date of first written offer to settle which is exceeded by the verdict. Senator Rock seconded the motion.

Senator Rock made a substitute motion to conceptually amend SB 525 to change date the interest begins to run from the date the cause of action accrued to the date the written demand for settlement is received, proof thereof provided by certified mail with a return receipt, amount of which is less than the amount of judgment entered; secondly to clarify that the interest does not apply to punitive or exemplary damages. Senator Martin seconded the motion. The motion carried.

Senator Feleciano moved to amend SB 525 by striking "by the clerk of the district court" on lines 36-37. Senator Oleen seconded the motion. The motion carried.

Senator Feleciano moved that SB 525 be recommended favorable for passage as amended. Senator Parrish seconded the motion. The motion carried.

Senator Bond moved to adopt the subcommittee report on SB 524 and conceptually amend to limit the \$250,000 cap to those cases where no pecuniary or exemplary damages are selected or chosen; if pecuniary or exemplary damages are sought, the cap for wrongful death is limited to \$100,000. Senator Moran seconded the motion. The motion carried.

Senator Bond moved to recommend SB 524 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

Senator Rock moved to recommend SB 190 (surrogacy) and SB 726 "be not passed". (SB 726 is an exact duplicate of SB 708.) Senator Moran seconded the motion. The motion carried.

Senator Rock moved to approve the minutes of February 8, February 12 and February 14 as written. Senator Yost seconded the motion. The motion carried.

The meeting was adjourned at 5:20 p.m.

59-602. Limitation on testamentary power or other dispositional power. (1) Any devise or other disposition of real estate located in this state taking effect in possession or enjoyment at death, and any bequest or other disposition of any personal property by a resident of this state taking effect in possession or enjoyment at death, without regard to the time when the will or other instrument containing such devise, ~~or~~ bequest or other such disposition shall have been made, to any foreign county, subdivision thereof, or city, body politic, or corporation, located therein or existing under the laws thereof, or in trust or otherwise to any trustee or agent thereof, except devises, and bequests or other such dispositions to institutions created and existing exclusively for religious, educational, or charitable purposes, is hereby prohibited. Any such devise, ~~or~~ bequest or other disposition shall be void. (2) Either spouse may by will, or by other disposition determined to be subject to a surviving spouse's right of election, transfer away from the other, half of his or her property, subject to the rights of homestead and allowances secured by statute. Neither spouse shall, by will or any other disposition determined to be subject to a surviving spouse's right of election, will transfer away from the other, more than half of his or her property, subject to such rights and allowances, unless the other shall consent, ~~thereto~~ in writing executed in the presence of two or more competent witnesses, to

Senate Judiciary Committee
2-26-90 p.m.

Attachment I page 1 of 3

the will, if any, and shall have consented to any and all other
dispositions determined to be subject to a surviving spouse's
right of election as provided by law, or shall elect to take
under the testator's will and all other dispositions determined
to be subject to a surviving spouse's right of election as
provided by law K.S.A. 59-603.

59-603. Election of spouse; failure to make, effect. The surviving spouse, who shall not have consented in the lifetime of the ~~testator~~ decedent to the testator's will and any and all other dispositions determined to be subject to a surviving spouse's right of election as provided by law, may make an election whether he or she will take under the will and such other dispositions determined to be subject to a surviving spouse's right of election or take what he or she ~~is~~ would be entitled to by the laws of intestate succession were he or she the surviving spouse of a decedent who leaves a spouse and child; but he or she shall not be entitled to both. If the survivor consents to the will and all other dispositions determined to be subject to a surviving spouse's right of election or fails to make an election, as provided by law, he or she shall take under the testator's will and all other dispositions determined to be subject to a surviving spouses right of election in the manner herein set out.

The election shall be filed in the District Court in the case in which the decedent's estate, testate or intestate, is being administered. The court shall have jurisdiction and venue to order the one-half of the dispositions determined to be subject to the surviving spouse's right of election be set aside to the surviving spouse to the extent necessary, pro-rata, from among the dispositions subject to the surviving spouse's right of election unless the dispositive instruments otherwise provide the source of payment.



KANSAS MEDICAL SOCIETY

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February 19, 1990

TO: Senate Judiciary Committee
FROM: Kansas Medical Society *Christa Steuler*
SUBJECT: Senate Bills 190 and 671; Agreements for Services of a Surrogate Mother

The Kansas Medical Society does not have a position on either of the two bills being considered by your Committee. We do, however, wish to focus your attention on the Committee conclusions and recommendations as a result of a 1989 Interim Committee study of this same subject.

Attached to this statement is a copy of page 477 of Interim Committee Reports to the 1990 Legislature. You will note that the Committee recommended that only licensed attorneys, physicians, social workers and child placement agencies should perform the function of arranging a contract for surrogate motherhood. By contrast, you will note that SB 671 would delegate the authority to perform such functions to attorneys, health care providers, social workers, or any child placement agencies licensed in this State.

There is an important distinction to be made in regard to physicians versus health care providers. Physicians are persons licensed to practice medicine and surgery pursuant to the Healing Arts Act. By contrast, unless the phrase "health care providers" is defined for purposes of this act, it could mean a number of professions. For example, K.S.A. 40-3401 defines health care provider to include a physician, an optometrist, a podiatrist, a pharmacist, a nurse anesthetist, a dentist who administers anesthetics, a physical therapist, a hospital, a health maintenance organization, a professional corporation of health care providers, a partnership of health care providers, a psychiatric hospital, or a mental health center. Furthermore, K.S.A. 65-4921 defines health care provider to include all of those entities identified under K.S.A. 40-3401 and also a dentist, a dental hygienist, a professional nurse, a practical nurse, a mental health technician, a physical therapist assistant, an occupational therapist, an occupational therapy assistant, and a respiratory therapist.

We respectfully suggest that if the Committee desires to take action on either Senate Bill 190, 671, or any other measure dealing with authority to arrange contracts for surrogate motherhood, that the term "physician" be used and defined as a person licensed to practice medicine and surgery, or that you employ the phrase "health care providers" and define that phrase to mean those professions which you desire to be authorized to make arrangements for such contracts. Thank you for considering our concerns.

CW:lg

*Senate Judiciary Committee
2-26-90 pm.
Attachment II page 1 of 2*

Judicial Council to look at the provisions of a bill approved by the American Bar Association shortly thereafter, however, the full Bar Association rejected the model that states consider the options of Commissioners on Uniform Statutes has proposed a Uniform Status Act, which recognizes the validity of a complete alternative to the act of surrogacy motherhood contracts void. At the Judicial Council nor its Family Law Review of the surrogacy issue.

Contracts included a representative surrogate who testified by a speaker who said childbirth was being treated as a medical production. She stated that it was a woman's dignity since women's bodies and children were being treated as

At her experiences as a surrogate and her children were angry with her that she had suffered considerable experience.

Proposed by the National Committee on Surrogacy from Lawrence. The latter amendments amounted to planned changes of the child standard was not

Amendments included representatives of surrogate mothers and a married couple who wanted to obtain their son. In addition, the committee received a number of letters from surrogate mothers, many of whom were concerned by this means.

The Institute for Surrogacy, Inc., explained that their organization is staffed by professionals, which is not the case by the state. The organization has been active in surrogate mother arrangements begun in 1988. The Institute is continuing their search for a surrogate mother and the cost varies from \$22,000 to

\$25,000, with the surrogate mother receiving approximately \$10,000 at the end of the term after the baby is born. They supported legislation that would either recognize the legality of these agreements or in the alternative at least codify that those agreements are voidable.

They testified that there was a very large constituency in favor of surrogate contracts and that the problem of infertility was growing. Surrogacy provides a real service for infertile couples that are unable to adopt an infant or want to have a baby that is genetically their own or that of one parent. It also provides an option for couples when the woman does not want an interruption in her career caused by pregnancy. Fees paid to surrogate mothers are similar to the living expenses paid to expectant mothers intending to adopt the child. They said that their service provides a careful program of screening of both the couples and surrogate mothers. They said agreements to date have been satisfactory to both parties.

The four surrogate mothers testified that it was a positive experience for them helping couples obtain a child they badly wanted and that the Hagar organization had been very supportive. The parents who received the child through a surrogate agreement said the whole experience had been great and that if the surrogate mother had opted to void their contract they would have been willing to permit her visitation rights.

Committee Conclusions and Recommendations

The Committee concludes that the law should specifically recognize that surrogate contracts should be made voidable. The Committee believes this recommendation reflects what is the current status of the law, but that the Legislature should specifically address this issue in the statutes rather than leaving this issue for court determination. The Committee further concludes that those involved in arranging, promoting, or mediating a surrogate contract should be licensed professionals. Therefore, the Committee recommends that only licensed attorneys, physicians, social workers, and child placement agencies should perform these functions. Violations would be considered a class B misdemeanor.

The Committee recommends that these changes be adopted as amendments to 1989 S.B. 190 by the Senate Judiciary Committee and that the bill, as amended, be enacted by the 1990 Legislature.

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